

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	520
Land:	Gaza-Vestbredden
Kilde:	Women's Centre for Legal Aid and Counselling (WCLAC)
Titel:	Parallel Report to the Initial report submitted by the State of Palestine in accordance with article (19) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
Udgivet:	1. juni 2022
Optaget på baggrundsmaterialet:	13. oktober 2022



Parallel Report
to the Initial report submitted by the State of Palestine
in accordance with article (19) of the Convention against Torture and
Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

June 2022

This report is submitted by the Women's Centre for Legal Aid and Counselling (WCLAC)

Executive Summary

This NGO parallel report is submitted by the Women's Center for Legal Aid and Counselling (WCLAC) which has a special consultative status with the UN Economic and Social Council (ECOSOC) since 2005.

WCLAC appreciates The State of Palestine accession to CAT without reservations in April 2014, and the ratification of the OPCAT in December 2017. Palestine became the fifth State party in the MENA region to ratify it. Yet, we demand the State Party to clarify the reason/s behind not publishing the CAT and all other treaties to which it acceded since 2014 in the Official Gazette.

WCLAC affirms that Palestine's legal commitment to the CAT does not absolve Israel, the occupying power, of its responsibilities towards the 1967 occupied Palestinian territory (oPt). Israel, as the occupying power, has effective control over the oPt and therefore, human rights treaties and conventions are legally binding on all persons under its jurisdiction, including those in the oPt. Thus, we agree with State of Palestine's initial report, paragraphs (10) and (11), and stress the need not to allow the occupying power to evade its legal obligations in accordance with the provisions of International Humanitarian Law (IHL) and International Human Rights Law (HRL).

This parallel report will focus on the following issues from a gendered-perspective:

- I. Attributive Component: State Responsibilities and Due Diligence in accordance with CAT**
 - I.1 State responsibility and Due diligence
 - I.2 Attributive component of torture
 - I.3 State Party's Accession to the Optional Protocol (OPCAT)
- II. Substantive Component: Domestic Violence as Torture**
 - II.1 Violence against Women in the Private sphere
 - II.2 Femicide: A breach to the right to life
 - II.3 Early marriage
 - II.4 Violence against women in the public sphere
- III. Direct Women Victims of Torture**
- IV. Indirect Women Victims of Torture**
- V. Legal Gaps of Relevant Laws**

I. Attributive component: State responsibilities and Due diligence in Accordance with CAT

I.1 State responsibility and Due diligence

1. Committee against Torture stated in its General Comment (No. 2. F. 22.) that State reports often lack specific and sufficient information on the implementation of the Convention with regard to women. The General Secretary Note of 2019 based on the report of the Special Rapporteur (SR) on Torture, Ms. Nils Melzer, states that “domestic violence amounts to torture and ill-treatment within the generic meaning of those terms under international law and the attributive analysis into the way the State may be held responsible for its involvement in, including its failure to take appropriate action against, domestic violence.”
2. The report also emphasized that “domestic violence therefore always amounts to cruel, inhuman or degrading treatment or punishment and very often to physical or psychological torture.” As such women have major characteristics that expose them to different forms of violence and ill treatment; especially patriarchal norms, gaps in the national laws and limited political will to comply with international conventions and treaties. Therefore, women in general and women victims of gender-based violence (GBV) are at risk of the consequences of this context through deprivation of their liberty, particularly when it intersects with discrimination and deprivation of other rights, including reproductive rights and violence by private non-state actors in the communities and at home.
3. The State Party has a legal obligation, under Article 16 paragraph 1 of the CAT and in compliance to Article 2, to take all the necessary measures, including legislative, judicial and administrative measures, to prevent all acts of cruel, inhuman or degrading treatment or punishment which do not necessarily amount to torture as defined by Article 1. Such obligation is even described by the General Comment No.2 (2007) as “indivisible, interdependent and interrelated.”, and directly corresponds to Articles 10-14 of CAT, which highlight among other things the responsibility of the State Party and the competent authorities to carry out impartial-investigations, provide compensation, and the right to complaint. Accordingly, prevention of GBV is a legal obligation specified by the Convention, and further elaborated on by the SR in his report.
4. The Initial report submitted by the State of Palestine under article 19 of the Convention in June 2019 failed to include any information or sections on violence against women (VAW) and girls. The State Party has the responsibility to “prevent acts of torture and ill-treatment within its jurisdiction, including at the hands of private actors (arts. 2 and 16 of CAT the).”
5. With reference to CAT paragraphs 18 and 19 of its general comment No. 2 (2007) on the implementation of Article 2 by States party, the Committee Against Torture confirmed that States’ due diligence obligations to prevent, investigate, prosecute and punish acts of torture or other cruel, inhuman or degrading treatment by non-State actors, including GBV such as rape, domestic violence, female genital mutilation and trafficking.
6. WCLAC stresses the failure of the State Party to define torture as a crime in the current legislation in force as clarified in paragraph (17) of the initial State Party report, which only classified it as a “misdemeanour” and not even a felony. State Party also has taken

no measures to provide a comprehensive definition of torture in national legislation or amend those in force to criminalize torture, inhumane and degrading treatment

7. As a consequence, the State Party fails to exercise due diligence to prevent, investigate, prosecute and redress torture and ill-treatment when committed by both government officials and private perpetrators, including in the context of domestic violence. This amounts to consent or acquiescence in torture or ill-treatment (Committee against Torture, general comment No. 2, para. 18).
8. Following the accession to CEDAW, the State Party failed to take necessary measures to eliminate discrimination, gender inequalities and to combat GBV. The State Party failed to respond to the concluding remarks of CEDAW Committee in 2018; especially the adoption of the Palestinian Penal Law and the Family Protection Bill. While the State Party committed to a follow-up report, which was submitted in a timely manner (2020), no meaningful progress was witnessed on the ground.
9. As such, Palestinian government showed no political will to confront counter campaigns of right-wing and radical conservative political and religious groups against the State Party's accession to CEDAW and against feminist advocacy campaigns for the adoption of the draft Family Protection Bill. These conservative groups carried out smear campaigns against feminist and women's rights organizations that are advocating for gender equality and the compliance of national legislation with international conventions and human rights treaties to which Palestine has acceded.
10. Inaction by the State Party against counter campaigns is a violation of their legal obligations by "omission". According to the due diligence standards in combating VAW that are stipulated in customary international law for example, the State Party is obliged to pass and enforce these standards. We call on the CAT Committee to question the State Party on measures taken to enact its due diligence obligations under CAT.

Recommendations:

- We call on the State Party to address the latent and root causes of VAW through changing perceptions, eliminating root causes of GBV, adopting laws, offering comprehensive constitutional guarantees, collecting data, and designing programs to combat VAW.
- A comprehensive rights-based definition to discrimination and GBV, as well as monitoring tools, should be adopted to ensure better documentation at the national level, and hence ensure women's access to justice
- The State Party should also take preventive measures to combat VAW through designing plans and programs to meet needs and priorities of the victims of GBV, with specific responsibilities and accountability to line ministries; namely Ministry of Social Development (MOSD), Ministry of Health (MOH) and other official service providers.
- We call on the State Party to provide psychological and protection support services for women victims of GBV to reintegrate them back into society. Protection and distance orders to keep the perpetrators of VAW away from the victims should be issued by law to ensure protection of the victims of GBV. The State should also support protection of government officials and service providers while carrying out their duty, and enhance

awareness and positive attitudes through continuous training and capacity-building activities.

- The State Party has legal obligations to secure a prompt and positive response by the police and the public prosecutor in favor of the victims of GBV. It should also ensure investigating and prosecuting the perpetrators as well as to enhance the police and the judiciary's reliability by appointing specialized public prosecutors, and establishing specialized family courts.
- To ensure remedy to victims of domestic violence, the State Party is also responsible for ensuring that victims are compensated adequately through reparation as stated in international human rights standards. The victims should also receive indemnification for the harm and violence sustained, since in some cases, and despite the penalty against the perpetrator, the victim continues to suffer from the effects of the violence to which they were exposed.

I.2 Attributive component of torture:

11. From the attributive perspective of State responsibility, State Party has positive obligations that require States to take “effective measures”, both general and individualized, to prevent, protect against, respond to and provide redress for torture and ill-treatment. State Party is required to establish legal provisions, mechanisms and processes that effectively protect people from torture and ill-treatment, including in the context of domestic violence. The State Party must have general, operational, investigative and procedural duties, redress, reparation and non-recurrence, as the Special Rapporteur on torture attested/emphasized in his report.
12. According to Operational duties of the State party, the state must take effective measures to protect individuals from particular risks of torture or ill-treatment of which they know or ought to know. This requires the State party, in accordance to Article 13 of the CAT, to establish avenues and mechanisms for receiving, recording and responding effectively to complaints of torture or ill-treatment, including domestic violence and to establish services and institutions capable of initiating and implementing protective measures in a prompt and effective manner. Article 13 further calls for the protection of the complainants and witnesses against ill-treatment or intimidation as a consequence of his/her complaint or any evidence given.

Recommendations:

- From Attributive perspective, State Party must take effective legislative, administrative, judicial or other measures to prevent acts of torture or ill-treatment in any territory under their jurisdiction (arts. 2 and 16 of the Convention against Torture). Thus, we call on the CAT Committee to question the State Party on measures taken to enact its due diligence obligations under CAT and other human rights treaties to which Palestine has acceded.
- We call on the State Party to adopt a specialized Law to combat Torture, inhumane or degrading treatment or punishment and criminalize such acts. A comprehensive definition to torture in line with article (1) of CAT should be included in the Law. The draft penal law of 2011 should also criminalize all acts of torture, abuse, inhumane and/or degrading treatment.
- We also call on the State Party to ensure a regular monitoring and inspection of the conditions and operation of the Penitentiaries and Rehabilitations Centres by the

executive and judiciary branches, intergovernmental organization, i.e. The Independent Commission for Human Rights (ICHR) as the Palestinian national institution, and human rights civil society organization. These inspections should be gender sensitive, transparent and independent.

- The State Party has legal obligations to hold offenders accountable and to ensure their prosecution as commensurate with the offense while achieving the aims intended by such punishment.
- The State is also obliged to broaden the scope of the existing penal system, so that it is not restricted to imprisonment where appropriate, and to establish punishments based on the standards of protecting human rights as stated in international treaties and human rights standards.

I.3 State Party's Accession to the Optional Protocol (OPCAT)

13. According to Article 17 of the Optional Protocol to the Convention against Torture (OPCAT), States should designate or maintain a national preventive mechanism within one year of ratification. Since the State of Palestine acceded to the (OPCAT) in 2017 which WCLAC highly commends Palestinian human rights groups and civil society organisations have followed up on the establishment of the National Preventive Mechanism against Torture (NPM). There was consensus between CSOs and the government that the NPM will be impartial, independent of the Executive branch of government, and autonomous both financially and institutionally. However, Law by Decree No. 25 of May 2022 on the establishment of the “National Commission against Torture” was published in the Official Gazette, which is in conflict with the key principles agreed upon during the dialogue between civil society organizations and the government taskforce mandated to develop a draft NPM law.
14. The Law by Order No. 25 is also in contravention to the State of Palestine's obligations under the OPCAT and Guidelines on NPMs. It views the NPM as a State institution and government agency, to which all laws and regulations on official institutions are applicable. It maintains the Executive's approach to taking over and dominating national commissions, rendering them unable to deliver assigned tasks independently and impartially. Under the said law by decree, the NPM will not be capable of passing the test of independence and impartiality, turning the Mechanism into an additional formal body at the expense of the agony and suffering of the victims of torture and ill-treatment.
15. The law by decree was passed just two months ahead of the consideration by the the CAT Committee's review of the initial report submitted by the State of Palestine to the Committee. WCLAC and CSOs considered that this timing attempts to uplift the image of Palestine before the CAT Committee while the report is under consideration. Violating international standards and State of Palestine's obligations, the law by decree will negatively impact the standing of Palestine before the CAT as well as other treaty bodies and international agencies.

Recommendations:

- WCLAC and Human rights CSOs call on the State Party to freeze the law by decree No. 25 of 2022 on the National Commission against Torture, and resume consultation with human rights and CSOs.
- Call on the State Party to consider the earlier draft law of the NPM which has been consulted with relevant CSOs to ensure consensus among all stakeholders that the NPM is impartial, independent of the Executive branch of government, and autonomous both financially and institutionally.

II. Substantive component: Domestic violence as torture

II.1 Violence against Women in the Private Sphere (Domestic Violence)

16. The State of Palestine drafted Penal Code in 2011 to abrogate the Penal Code No. (16) of 1960 in force, and Penal Code No. (74) of 1936 in force in the Gaza Strip. However, this has not made much progress in addressing sexual offences.
17. According to the official CEDAW Follow-up Report, the State of Palestine had the intention to host meetings of specialist reviewers on the draft Penal Code at the start of 2020, but the meetings were postponed due to the Covid-19 pandemic in Palestine and the declaration of a state of emergency. However, and in the presence of problematic provisions in the draft penal code, delaying the review of the drafted law (2011) to date cannot be justified under any circumstances.
18. According to the 2019 national violence survey conducted by the Palestinian Central Bureau of Statistics (PCBS), at least 29% of married women were subjected to one form of violence during the past twelve months of the survey (3 out of 10 women). However, the survey does not reflect the reality of GBV in its temporal stages and the circumstances related to that period. Sensitivity of the subject when collecting field information from women has not been considered, especially as it is collected in the context of home visits where family members, including the perpetrator, may be present. This setting requires victims to talk about domestic violence, sexual violence in particular, which will not be easy for women to discuss with the field researchers in the first and only interview. In practice, women take time to make the decision to share information about the violence of sexual abuse to which they are exposed.

II.2 Femicide: A breach to the right to life

19. As mentioned earlier, in the Secretary-General's note on the *Interim report of the Special Rapporteur on torture* point (10), "from a substantive perspective under international law, domestic violence always amounts to cruel, inhuman or degrading treatment or punishment and very often to physical or psychological torture."
20. While Femicide is capital punishment, a breach to the right of life, and a direct outcome of the State Party's "failure to combat GBV".
21. At the national level the Palestinian Ministry of Women's Affairs established the National Observatory for Violence against Women which officially include (18) NGOs and governmental institutions with the aim of providing data on GBV, to help in formulating policies and developing plans, identifying patterns and causes of GBV and unifying the national efforts towards combating GBV. However, the pace of its

functionality is still slow and requires activations to ensure that the national observatory works with higher efficiency in providing necessary official statistics on GBV and femicide cases.

22. Since Palestine's accession to International Conventions and Treaties; especially Convention on Torture and CEDAW the Palestinian Authority did not do much to comply with provision of these conventions. There had been limited progress on measures taken to prevent or reduce the number of femicide cases in Palestine.
23. In addition, there is a predominance of discriminatory and outdated laws and legislation inherited from previous rules over the occupied Palestinian territory (oPt) such as the current Penal Law, Personal Status Law on one hand, and the absence of a Family Protection Bill and a comprehensive protection system for victims of GBV and femicide on the other hand.
24. In breach of the State Party's responsibility under Article 2 (1) of the CAT, and in spite of all efforts made by Palestinian human rights and women's rights organizations to pressure and influence decision-makers and legislators, the Family Protection Bill- which was drafted 16 years ago- is yet to be adopted.
25. The current Penal laws that are in force are the Jordanian Penal Code No. (16) of 1960, and the Palestinian Penal Code No. (74) of 1936 in the Gaza Strip. The Palestinian President issued a set of Presidential Decrees amending and/or suspending some articles and legal texts in penal laws which are relevant to sexual crimes and femicide cases. These Presidential Decrees amended provisions of Article (98) of the Penal Code in the Decree-Law No. (10) of 2014, which stipulates stopping the use of mitigating excuses in honour killings, and provisions of Article (99) in Decree-Law No. (5) of 2018, which removes the ability for mitigating discretionary excuses to be used in cases of honour killings.
26. Despite these amendments, court rulings in cases of femicide and sexual crimes do not reflect their full implementation. Judicial rulings are governed by the restricted definition of the law and by the mentality of the judges which lacks gender-sensitivity, and often reflects the traditional social and cultural gender stereotypes within society. We stress the inadequacy of the judicial enforcement of these amendments which has recently led to a steady increase in the rate of femicide. In this regard, WCLAC has documented (37) cases of femicide during 2020, and (24) cases in 2019.¹
27. In 2020, WCLAC monitored and reviewed legal proceedings of (22) cases related to GBV crimes (e.g., minor or eloquent abuse, indecent assault, rape, threats and attempted murder) to test the feasibility of women's access to justice in the Palestinian judicial system. The analysis concluded that women were mostly discriminated against in the Palestinian criminal justice system, and that there were several challenges that women victims encountered when they decided to break the silence and judicially pursue their cases in courts. In most of the above cases, women were forced to withdraw their cases from courts at early stages of the litigation process due social pressures and loss of confidence in the judicial system as a whole.
28. The analysis of femicide cases (58) for the years 2019 and 2020 documented by WCLAC, showed that 27% of these murders were committed by the brother of the victim, 23% were committed by the husband, and the other 23% of the cases were committed by the father, while the rest of the cases were committed by others such as

¹ <https://www.wclac.org/files/library/21/11/oacdm6raannp1oehgzhttpw.pdf>

the stepfather, and the brother in-law². Similarly, the 29 cases of femicide (17 cases in the West Bank and 12 cases in Gaza) documented in 2021 showed that the killings are performed by a male family member, usually sharing the same living space as the female victim.

29. The Palestinian Authority failed to adopt a comprehensive protection system as part of its emergency plan during the pandemic, and to ensure the provision of services to prevent gender-based violence, and the continuation of referral mechanisms.
30. According to a study conducted by Juzoor for Health and Social Development, 19.5% of respondents reported an increase in domestic violence during the lockdown and 70.8% reported that they anticipate additional increase in GBV as lockdown and movement restrictions continue to be enforced.³
31. The so-called “honour killings” are no longer the fundamental reason in the phenomenon of femicide. A broader definition of femicide is given by feminist organizations to include cases of suicide, which sometimes women and girls resort to when they are in trouble with closed avenues of hope for a better life or path, and the absence of an institutionalized national protection system. Often women are also forced to commit suicide by their families (fathers, brothers...etc.) to evade punishment for the crime of murder especially after the slight amendments to penal codes currently in force. Analysis of femicide cases by WCLAC reveal that after the legal amendments made, perpetrators forced women and girls to commit suicide in order to avoid any prosecution or punishment to the murder.
32. This explains the contradicting overall number of cases of femicide between official statistics and NGO human rights and feminist organizations. While official statistics of femicide cases is by far lower than those documented by NGOs, the official statistics of suicidal cases and attempts of suicide are much higher. In 2018 for example out of 196 occurrences of suicide or attempted suicide among "adults," (37) of children, the percentage of females was more than double that of males (71% females vs. 29% males), with numbers being considerably higher for girls than boys (95% females vs. 5% males).⁴

II.3 Early Marriage

33. The Secretary-General Note to the SR on Torture in 2019 emphasized that “child, early and forced marriage is a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence.” Early marriage “can inflict lasting harm, including severe psychological, emotional and physical suffering, marital rape and other forms of sexual abuse, servitude and life-threatening early pregnancies or unwanted pregnancies. These consequences being predictable given the children’s young age, the resulting infliction of suffering must be regarded as intentional and is generally rooted in profoundly discriminatory views of women and girls.”
34. Personal Status Laws (PSL) within State Party’s jurisdiction reinforce the principles of inequality and discrimination against women. Palestine lacks a unified, modern and just

² Ibid.

³ <https://gaps-uk.org/wp-content/uploads/2021/01/Now-and-the-Future-Gender-Equality-Peace-and-Security-in-a-COVID-19-World-Palestine.pdf> WCLAC, Now and the Future Gender Equality, Peace and Security in a COVID-19 World Palestine, p.7 (2020).

⁴ <https://www.wclac.org/files/library/21/11/oacdm6raannp1oehgzhtpw.pdf>

Palestinian legislative system for personal status issues that ensures equal relations between spouses within the marriage institution, which further exacerbates disparities and gender inequalities within the family.

35. The first article of Decree-Law No. 21 of 2019 which was issued by a Presidential Decree, stipulates that the marriage eligibility requires that the parties to the contract be sane, and adults (each of whom is eighteen years of age). However, according to paragraph (1), the competent court may, in special cases if the marriage is a necessity dictated by the interests of both parties, authorize the marriage of a person who has not completed eighteen solar years of age. This is done with the approval of the Palestine Chief Judge of the Sharia Court or the religious authorities of other Christian sects. These exceptions were left roughly, as it has not been determined what the legislator intended in having this exception. What is happening now on the ground is that an exception request is submitted to the Chief Justice to approve the marriage contract, and upon approval, the contract is made for those under the age of eighteen.
36. Another method used, to violate the legal text for the sake of marriage under the legal age, a marriage contract is organized by a person who could be a marriage officer or any person without directly appearing in the contract. The contract and marriage are performed. In case of pregnancy, the marriage contract is taken to the court judge in the presence of a personal status attorney. In one or two sessions, the marriage contract can be approved with the payment of symbolic fines by all those who participated in writing the contract, except for the authorized officer or the person who wrote the contract, as he did so without appearing directly.
37. It is the responsibility of the legislative and competent authorities to legislate the law to preserve and limit the phenomenon of child marriage in the Palestinian society. It is their responsibility not to leave exceptions and to strictly specify and monitor who performs a marriage contract for under-aged persons. Otherwise, the matter remains open to more violators and indifferent to the application of the law.

Recommendations

- Urge the State Party to expedite enacting the Family Protection Bill. We also stress the need to provide the five obligations imposed on the State Party based on the due diligence standard stressed by customary international law: prevent violence against women, protect women from violence, prosecute and punish perpetrators of violence, and provide redress to violence victims.
- Urge the State Party to take all the essential measures to protect women. This includes the state fulfilling its responsibilities in working to change the traditional and societal and cultural practices and perceptions that still gives femicide societal "legitimacy".
- Ensure that Palestinian courts overcome all obstacles for women's access to justice, and for the Palestinian family units within the Police and Public Prosecution Office become more responsive to women's complaints.
- Reform the administration of justice sector to adopt gender sensitive approaches within the judiciary to women victims of GBV, and to provide quality services and free legal aid services to women victims of GBV accessing the system.

- Expedite the review and approval of the draft Palestinian Penal Code in line with international conventions and references that guarantee human rights in general and women's rights in particular.
- Urge the State Party to take preventive measures to combat VAW through designing programs to meet needs and priorities of the victims of GBV, with specific responsibilities and accountability to line ministries.

II.4 Violence Against Women in the Public Sphere

38. There has been no protection for women activists in Palestine, as physical and verbal violence has been practiced against them during their participation in peaceful protests and demonstrations against the policies of the Palestinian government in the West Bank and against the *de facto* Authority in the Gaza Strip. These protests were carried out in rejection of the internal political division or during protests against the issuance of decisions of law affecting the interests of women, or against the behaviour of the Palestinian government by violations of public freedoms in peaceful protests and its practice of arbitrary arrest on political grounds.
39. WCLAC condemns the repression and abuse practiced by some security services against the male and female protesters through the use of people in civilian clothes during the events in June 2021. This brings to notice the increasing rate of targeting the peacefully protesting women whether they were participants in peaceful demonstrations or journalists who were fulfilling their duty to cover the events, through violent attacks including, physical assaults and verbal harassment, as well as confiscating their personal belongings and breaking their phones and cameras. This constitutes a functional failure that calls for holding the Palestinian government, its ministers, and Security Services responsible and accountable for not protecting the protesters male and female, in addition to holding them accountable for the continuation of the abuse thereafter.
40. In a dangerous unprecedented act of blackmail and defamation, some security services this time violated women's right to privacy and personal safety, as they confiscated and hacked their phones and posted their photos and personal conversations on members of some Security Services' social media accounts.
41. Article 2 (para.3) Under the Security Forces Service Act stipulates that any member of the security forces who, in the discharge of their duties, acts in a manner that is incompatible with their functions or whose conduct or comportment brings disrepute to the office is liable to be punished. There are no exemptions, except where it is established that the official acted on the orders of a superior who insisted that the orders be carried out, despite having been warned by the official that such orders contravened the law. In such cases, the superior alone shall be liable in accordance with articles 173 and 194 of the Act.
42. Targeting women and girls, in addition to the sexual harassment they have been subjected to during peaceful vigils, or during detention, power abuse by law enforcement officials, and the reinforcement of patriarchy is an invitation to violence and a threat to civil peace that encourages negative cultural perceptions about the presence and active participation of women in the public sphere that lead to stereotyping their roles.

Recommendation

- Demand the Committee to bring the State Party to accountability regarding the 'complex violence' practiced against women while peacefully demonstrating, and the reason behind the absence of protection for them in a way that guarantees accountability, reparation and ensuring non-recurrence; especially that these practices reinforced a negative cultural perception about the roles of women and girls and their exclusion from the public sphere.

III. Indirect victims of torture

43. Criticizing and denouncing Israel's violations of international human rights in the arrest and torture of Palestinian men and women is essential in and of itself, especially given that Palestinian men account for the bulk of politically detained prisoners. However, WCLAC believes it is of equal importance to consider the systematic repercussions of Palestinian men's imprisonment and torture on Palestinian women.
44. On one hand, WCLAC recognizes Palestinian men's resilience and sacrifice, and does not overlook their heroism in the struggle for justice and freedom. On the other, it finds it crucial to consider the trickle-down effects of abuse rooted in military detention, inflicted on men, and manifested in deep-rooted gender-based violence.
45. According to the UN Population Fund, the historic societal and patriarchal predicament in Palestine is exacerbated by the long-standing military occupation's violence and hostility. This is supported by a survey carried out by the United Nations Women considering the relationship between occupation violence and GBV, which finds domestic violence in Palestine to be complex and multi-layered, with occupation restrictions feeding into a more conservative society based on insecurity and protectionist behaviour. According to the survey, communities, men, and women who are subjected to violence inflicted by the occupation are more likely to become trapped in a cycle of domestic abuse. Hence, the effects of Israeli imprisonment and violence is not exempt when considering GBV in Palestine which reported to be 24.3% in the West Bank and 37.5% in Gaza as proclaimed by the PCBS.

IV. Direct Victims of Torture Women in Conflict with the Law:

Torture, degrading and ill-treatment against women in Palestinian Correctional and Rehabilitation Centres:

46. As established by the Bangkok Rules, women in conflict with the law, as a vulnerable group, have specific needs and requirements necessary to be realized in the rules and regulations of the Correction and Rehabilitation Centers, which worldwide were primarily designed for male offenders. Under such legal framework, the UN recognized the need for a gender-sensitive protection measures, as offenses committed by women are usually "a direct and indirect outcome of discrimination and deprivation of rights"

including GBV. It also recognizes that women in general commit minor crimes, to which we call for the establishment of alternatives to imprisonment.

47. Referring to CEDAW Recommendation 35 on the need of the State Parties to adopt as part of their mechanisms of assessment *“a gender sensitive approach is required to understand the level of pain and suffering experienced by women and that the purpose and intent requirement of torture are satisfied when acts or omissions are gender specific or perpetrated against a person on the basis of sex.”*⁵ However, contrary to this, there are reports of inhumane treatment and routine psychological abuse on sexual grounds. Prolonged isolation, sleep deprivation, denial of access to sanitation, stress positions, beatings, sexual harassment are all commonplace for Palestinian female prisoners.⁶
48. In addition, the Independent Commission for Human Rights (ICHR) received (1658) complaints related to allegation of torture and ill-treatment, between 2018-2021, in the West Bank and the Gaza Strip. The number of women's complaints reached (168), or 10% of the total complaints. As for the geographical distribution of these complaints, the commission received (80) complaints in the West Bank and (88) complaints in the Gaza Strip.
49. A decrease in the number of complaints received in the years 2020 and 2021 was reported, 12% less than the preceding years, mainly due to the pandemic and the corresponding measures taken by decision-makers including reducing the number of detainees in Correction and Rehabilitation Centers (penitentiaries) and giving them home-leaves. Therefore, this not an indicator of an adoption of the required preventative measures of torture and ill-treatment, and the State Party still has a legal obligation to be fulfilled.
50. As for the forms of allegation of torture reported to the ICHR they were as follow, first, torture and threats from law enforcement officials, with a number of (50) violations, at a rate of 29.7%, distributed as (11) violations in the West Bank, and (39) violations in the Gaza Strip. Second, cruel and inhuman treatment by law enforcement officials, with a total of 51 violations, at a rate of 30%, divided into (17) violations in the West Bank, and (34) violations in the Gaza Strip. Third, physical or moral assaults, (67) cases with a rate of 39.8%, distributed as (30) violations in the West Bank, and (37) violations in the Gaza Strip.
51. Notwithstanding the Amended Basic Law (2003) stipulating in its Article 13 that no one may be subjected to any coercion or torture, as well as the invalidity of any statement or a confession issued under such circumstances. In addition, the Correction and Rehabilitation Centers “prisons” Law No. (6) for the year 1998 prohibits the administration of detention centers from practicing any acts of torture or the use of acts of force against the inmate. Further, torture and ill-treatment are prohibited under customary international law and are considered *“jus-cogens”* legal rule, which is compelling and no derogation is allowed.
52. We commend paragraphs 109 -120 of the State Party initial report, which highlight the Ministry of Health and the Ministry of Social Development in regulating the social

⁵ CEDAW Committee, “General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19” (2017) CEDAW/C/GC/35, Para. 17.

⁶ Addameer, ‘Imprisonment of Women and Girls’, December 2017. Available at: http://www.addameer.org/the_prisoners/women

protection and health sector, including mental-health services, and conducting field visits for the purposes of psycho-social counselling services, however, we call on the State party to provide more elaboration on the additional steps and consideration taken to ensure a gender-sensitive framework of operation.

53. We also commend paragraph 44 and 45 of the State Party initial report with regards to the rights of female prison inmates, article 24 of the Correctional and Rehabilitation Center Act and in particular under Article 27, where special allowance is made for pregnant inmates who are recorded special treatment, however we demand to consider structured alternatives to imprisonment including corrections and rehabilitation centers aiming to integrate female prisoners through providing psycho-social support by relevant and feminist CSOs as well as rehabilitation programs.

Recommendations

- Women and girls should not be imprisoned without a detention order, and if they are legally detained, their dignity and safety should be maintained. WCLAC views this to be the responsibility of the State Party, and for officials in charge to be held accountable and sanctioned if such incidents occur.
- Call on the establishment of a gender-sensitive monitoring system with participatory observations inside the civil court system and the District Attorney's office. Legal system including judges, prosecutors, and lawyers should receive gender-sensitive trainings in order to enable them to efficiently use the monitoring tools.
- Call for the entire chain of justice to be checked on regular basis to ensure that women seeking justice and/or in-conflict with the law are not subjected to any hurdles, intimidation, or punitive repercussions.
- Ensure that medical and psychological care is provided to women detained or inmates in correction and rehabilitation centres on a regular basis, and that specialized medical testing mechanisms are established within those places to detect cases of torture and ill-treatment.
- The need to activate preventive measures, gender sensitive protection measures for detained women adopted by United Nations rules on the treatment of female prisoners and non-custodial measures for female offenders (Bangkok Rules), to protect women's right to physical integrity and to reduce violations related to them.
- Further equip actors of the judicial system, staff at detention facilities, and Correctional and Rehabilitation Centres with the UNODC Handbook for Prison Managers and Policymakers on Women and Imprisonment, to ensure gender-sensitive treatment methods.
- Considering the consequences of state-inflicted abuse is critical to maintaining women's progression and health, we urge that players in the court system, as well as social protection agencies, become more aware of the needs of women who endure violence inflicted by the state. Better rehabilitation and prevention of harmful impacts on women's lives and destinies can be achieved by providing psychosocial support. Specialized CSOs should be granted access to provide such support when needed.
- The State Party has an obligation to ensure a regular monitoring and inspection of the conditions and operation of the penitentiaries and rehabilitations centres by the executive and judiciary branches, intergovernmental organization, i.e. ICHR, and

human rights civil society organizations. These inspections should be gender sensitive, transparent, and independent.

V. Legal Gaps of Relevant Laws

54. The amended Basic Law of 2003 and its amendments expressly prohibit torture and ill-treatment as stipulated in Article (13) which states in Paragraph 1 “No person shall be subject to any duress or torture. Indicates and all persons deprived of their freedom shall receive proper treatment” Paragraph No. 2 of the same article states that “All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.” This article is consistent in principle with the Convention Against Torture in terms of prohibiting the practice of torture. The law, however, did not impose any criminal punishment as a deterrent to the practice of torture and ill-treatment, in compliance with Article II of the CAT regarding the State responsibility to take “effective” measures, including legislative measures. We, therefore, request the State Party to add an article criminalizing torture in the Palestinian Basic Law, to be defined as a felony.
55. Article 13 of the Palestinian Basic Law did not clarify whether the prohibition of torture applies to crimes of domestic violence. This Article does not define the State responsibility to define protection mechanisms from torture to protects women from domestic violence and femicide. In this regard and based on the due diligence standards, the State has the responsibility to protect women both in the domestic and public spheres.
56. Articles (440) and (441) of the draft Palestinian Penal Code (which the State Party keep referring to in its initial report) failed to define the crimes of incest as sexual crimes. The legal texts in the draft penal code also failed to distinguish between “consent” and “acquiescence”, ignoring the fact of imbalance of power within the family, and deep-rooted patriarchal structures which force women and girls to incest relations within the family due to the imbalance of power between males and females within the family, and hence criminalizing such relations under the pretext that they take place with the “consent” of both parties.
57. Article (459) of the draft Penal Code of 2011 still excludes marital rape. Article (480) of the draft also stressed the need for the offender to know the age of the victim, considering the victim’s age as an aggravating circumstance, and in the event of his lack of knowledge, the offender is exempted from the aggravating circumstance. Based on Article (466) a special penalty regarding the different nature of martial intercourse. This Article, however, did not pay attention to the psychological situation of the victim and the physical consequences of the act on her.